

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

LOGAN O. BISHOP, SR.,)	
)	
Plaintiff,)	
vs.)	NO. CIV-11-0550-HE
)	
ROBIN ROOF, <i>et al.</i> ,)	
)	
Defendants.)		

ORDER

Plaintiff Logan O. Bishop, Sr., a state prisoner appearing *pro se*, filed this § 1983 action alleging violations of his constitutional rights. Consistent with 28 U.S.C. § 636(b)(1)(B), the matter was referred to Magistrate Judge Bana Roberts for initial proceedings. She has recommended that plaintiff's motion seeking injunctive relief against Davis Correctional Facility Warden Wilkinson be denied because he is not a party to this lawsuit. Plaintiff objects to the Report and Recommendation, asserting that Mr. Wilkinson, as the current warden at Davis Correctional Facility, should be substituted for the former warden.


While such substitutions occur routinely in cases where a petitioner is seeking habeas relief, this is not a habeas case, but a § 1983 action. Plaintiff is essentially attempting to add a new claim against a new defendant late in the proceedings, after a dispositive motion has been filed and is at issue. While plaintiff is not barred from pursuing his retaliation claim, he simply may not do it in this lawsuit. The court will, though, substitute Mr. Wilkinson in his official capacity for the former warden in his official capacity. If plaintiff should prevail on his claims and be entitled to some type of injunctive relief, the current warden is the

person who would implement any required action. Plaintiff will not, though, be permitted in this action to assert any new claims against Warden Wilkinson.

Accordingly, the court plaintiff's motion requesting injunctive relief [Doc. #78] is **DENIED**. Warden Wilkinson, in his official capacity only, is substituted for the former warden in his official capacity.

IT IS SO ORDERED.

Dated this 3rd day of December, 2012.



JOE HEATON
UNITED STATES DISTRICT JUDGE